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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,050	08/12/2002	Dany Ray	Q68978	6570
23373	7590	04/22/2004	EXAMINER	
SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			NICOLAS, FREDERICK C	
			ART UNIT	PAPER NUMBER
			3754	

DATE MAILED: 04/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/088,050

Applicant(s)

RAY ET AL.

Examiner

Frederick C. Nicolas

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 8 and 11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9, 10, 12 and 13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-13 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Species A: Figures 1, 1A, claims 1-7,9-10 in Paper No. / 4/1/2004 is acknowledged. The traversal is on the ground(s) that there is no undue burden on the Examiner to examine the subject matter of all the pending claims. This is not found persuasive because the two species of claimed invention are clearly not related in terms of their modes of operation. For example, in the elected species of Figures 1, 1A, the cylindrical ring that engaged on the body is made of metal. On the other hand, in the species of Figures 2A, 2, the cylindrical ring that engaged on the body is made of plastic. Clearly, there exist unrelated features among the species of claimed invention, which will require a separate search area for each species and thus, impose a burden in search and examination for the Examiner.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 8 and 11 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Information Disclosure Statement

3. All references of record in parent application PCT/FR00/02516 have been considered. However, as applicants have failed to list the patents on a FORM PTO-1449, they will not be printed on the face of any patent issuing from this application. Should applicant wish these references to be printed, a FORM PTO-1449 listing those patents should be provided.

Claim Objections

4. Claims 9 and 12 are objected to because of the following informalities: in claim 9, lines 1-2, it appears that there is lack of antecedent basis for the claimed limitation "the free top end", and in claim 12, lines 1-2, it appears the there is lack of antecedent basis for the claimed limitation "the radial flange". Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-7,9-10,12-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Regarding claim 1, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-7,9,12, are rejected under 35 U.S.C. 102(b) as being anticipated by Macquire-Cooper 3,977,575.

Macquire-Cooper discloses a fluid dispenser device designed to be mounted on the neck of a receptacle (20) (col. 6, ll. 33-34), which comprises a dispensing member (1), fixing means for fixing the dispensing member to the neck of the receptacle (col. 6, ll. 33-42), the dispensing member comprises a body (2) whose top end is provided with a collar (7) that projects outwards as seen in Figures 1-2, the fluid dispenser device being characterized in that the fixing means comprise a substantially cylindrical ring (23) engaged on the body under the collar as seen in Figures 6-7, the ring being in peripheral leaktight contact with the body by being radially clamped thereon (col. 7, ll. 6-16), the ring is extended at its bottom end by a radial flange (22) serving to come into abutment against the neck of the receptacle as seen in Figure 4.

With respect to claim 2, Macquire-Cooper discloses that the ring defines a top end in abutment under the collar as seen in Figures 6-7.

With respect to claims 3,5-6, Macquire-Cooper discloses that the body also forms at least one outwardly-projecting bulge (8,31) situated below the collar as seen in Figure 2, the ring being disposed between the collar and the at least one bulge so that the ring is locked therebetween (col. 6, ll. 33-68 onto col. 7, ll. 1-39).

With respect to claim 4, Macquire-Cooper discloses that the ring is of height slightly greater than the distance between the bottom face of the collar and the foot of the bulge as seen in Figure 6.

With respect to claim 9, Macquire-Cooper discloses that the free top end of the ring is provided with an inside bevel (25) to make it easier for the ring to pass over the bulge as seen in Figure 5.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 10 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Macquire-Copper 3,977,575 in view of Di Giovanni 5,169,038.

Macquire-Copper has taught all the features of the claimed invention except that a gasket being interposed against the neck of the receptacle. Di Giovanni teaches the use of a gasket (9) in a fluid dispenser (), where the gasket being interposed against a neck (10) of a receptacle (11), the gasket contacts the body (1) as seen in Figure 1.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Di Giovanni's gasket in between Macquire-Copper's neck as taught by Di Giovanni in Figure 1, in order to provide adequate sealing between the container neck and the radial flange.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Graham et al. 3,191,815, Meshberg 3,211,346, Coopridner 2,889,964, Gueret 6,073,805, Velicka 5,348,174, de Pous et al. 6,279, 786, Steinman 3,937,366, Lina et al. 5,190,192, Ponton 6,073,815, Lina 5,096,097, Lina 4,964,547, Bougamont et al. 6,463,650, Corsette 3,596,808 and Thompson 4,446,991 disclose other types of fluid dispenser. .

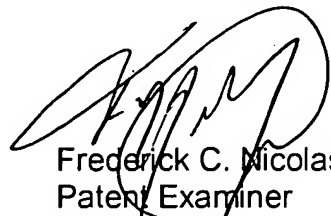
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12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (703)-305-6385. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mancene L. Gene, can be reached on 703-308-2696. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FN
April 13, 2004


Frederick C. Nicolas
Patent Examiner
Art Unit 3754

4/13/04